127-210

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 202.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

FRED. G. HERRICK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA

FILED JANUARY 16, 1885.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, AUGUST 8, 1887.

3 *Complaint.*

STATE OF MINNESOTA, *County of Freeborn:*

In District Court.

FRED. G. HERRICK, Plaintiff,

v.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Defendant.

Now comes the above-named plaintiff, by Lovely & Morgan, his attorneys, and complains in civil action against the above-named defendant, and alleges that the defendant is a railroad corporation duly created by and organized under and pursuant to an act entitled "An act to incorporate the Minnesota Western Railroad Company," approved March 3rd, A. D. 1853, and the acts amendatory thereof, and has its principal office and place of business at the city of Minneapolis, in said State of Minnesota, and owns and operates a railroad extending from the city of Minneapolis aforesaid to the city of Ft. Dodge, in the county of Webster and State of Iowa; that section 1307 of title ten of chapter
4 5 of the code of said State of Iowa provides and is as follows, to wit: "Sec. 1307. Every corporation operating a railway shall be liable for all damages sustained by any person, including employees of such corporation, in consequence of the neglect of agents or by any mismanagement of the engineers or other employees of the corporation, and in consequence of the wilful wrongs, whether of commission or omission, of such agents, engineers, or other employees, when such wrongs are in any manner connected with the use and operation of any railway on or about which they shall be employed, and no contract which restricts such liability shall be legal or binding;" which statute was duly passed and enacted by the General Assembly of said State of Iowa, and at the time of the injury hereafter stated was and still is in full force therein; that previous to the injury hereafter stated this plaintiff was
5 duly employed by defendant at said county of Webster, in said State of Iowa, to serve it in the capacity of brakeman, and thereafter, to wit, on or about the 6th day of December, A. D. 1881, while so in defendant's employ at said county of Webster, it became and was the duty of plaintiff to couple together an engine and a freight car on one of defendant's tracks, which engine was then in charge of one of defendant's servants and employees, to wit, an engineer; that defendant and its agents and servants carelessly and negligently omitted and neglected to provide or furnish said car which plaintiff was ordered to couple to said engine with a proper or suitable link and pin with which to make said coupling; but, on the contrary, the said link and pin which were furnished and attached to said car to be used for that purpose were wholly unsuitable, defective, and out of repair, but were not known to plaintiff to be so until after the injury hereafter stated, whereby plaintiff was then

and there exposed to great, unusual, and unexpected risk,
6 peril, and danger in the discharge of his duty in making said coupling.

The plaintiff proceeded to make the coupling, and then and there, at said county of Webster, while making said couplings, in the discharge of his duty as aforesaid, without fault or negligence on his part, received a severe and permanent injury, to wit: His left hand was caught between the said engine and car and crushed and mangled; that the bones of the thumb and two of the fingers were thereby broken and his hand otherwise greatly injured and wounded, making it necessary to amputate the thumb; that the injury to this plaintiff above set forth was caused and occasioned solely by reason and on account of the culpable carelessness, negligence, and mismanagement of the engineer so in charge of said engine as aforesaid, in the operation and management thereof, and in carelessly and recklessly driving said engine against said car contrary to and
7 in violation of order and signals then and there duly given to him for the movement and running of said engine, and by the defendant carelessly and negligently omitting and neglecting to provide proper and suitable machinery as aforesaid; that by reason and on account of the injury to this plaintiff, caused by the negligence and mismanagement of defendant and its employees as and in the manner above stated, plaintiff's hand was and is permanently crippled and maimed, and he is deprived of the use of his thumb and one of his fingers; that on account of said injury plaintiff became and still is sick, lame, and disabled, and from the time of the occur-ence of said injury until the 15th day of February, A. D. 1882, plaintiff was wholly incapacitated from attending to any business or performing any labor, and during all that time plaintiff has suffered and still suffers great pain of body and mind, and
8 was compelled to pay out large sums of money in endeavoring to get cured of his wounds, and is, as he is informed and believes, permanently injured so that he will never be as strong or able to carry on his business as before, and is otherwise greatly injured, to his damage in the sum of five thousand dollars; for which sum he demands judgment against defendant, with costs.

Dated March 3rd, A. D. 1882.

LOVELY & MORGAN,
Plaintiff's Att'ys, Albert Lea, Minn.

STATE OF MINNESOTA, }
County of Freeborn, } *ss:*

D. F. Morgan came before me personally, and, being duly sworn, on his oath says he is one of the attorneys for the plaintiff in the above-entitled cause; that the foregoing complaint therein is true to the best of his knowledge and belief, and the reason why this affidavit is not made by plaintiff is that he is absent from said county of Freeborn, where this affiant resides.

9 D. F. MORGAN.

Subscribed and sworn to before me this 3rd day of March, A. D. 1882.

[NOTARIAL SEAL.] JOHN A. LOVELY,
Notary Public, Minnesota.

Endorsed: Filed Jan. 9th, 1884. Geo. T. Gardner, clerk of district court.

10 STATE OF MINNESOTA, *Freeborn County:*

District Court, 10th Judicial District.

FRED. G. HERRICK, Plaintiff,

vs.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Defendant.

Answering the complaint of the plaintiff in the cause above entitled, defendant denies each and every allegation therein contained not hereinafter admitted. Defendant admits its corporate creation and existance as stated in said complaint.

Defendant admits the enactment and existance of the Iowa statute as set forth in said complaint. As to the averments of said complaints respecting the time or manner or place or extent of the plaintiff's alleged injuries and sufferings, or whether he was injured or suffered at all, defendant has neither knowledge nor information sufficient to form a belief. Further answering, the defendant expressly denies that plaintiff was ever in its employ; denies that plaintiff was in anywise injured through the negligence of defendant's engineer; denies that the person who is alleged to have been engineer of the defendant and through whose alleged negligence the injury sued for is alleged to have been occasioned was a servant of this defendant or in its employ in any manner; denies that the alleged
11 injuries sued for herein were occasioned, wholely or partly, by the alleged defective machinery or impliments; denies that said machinery or impliments or any of them were defective, and denies that they were in the use of the defendant at the time of said alleged injury; denies that it was plaintiff's duty to make the coupling as stated in said complaint, and denies that plaintiff was ordered by the defendant or any of its servants to make said coupling; denies that the plaintiff was exposed to great or unusual or unexpected risk or peril or danger; denies that plaintiff was injured while in the performance of any duty or service for this defendant, and denies that the plaintiff was injured through any negligence or wrong-doing of this defendant or any of its servants or employees.

Whether the damages sustained by plaintiff amount to five thousand dollars or any other sum the defendant has neither knowledge nor information sufficient to form a belief. Whether at the time of said alleged injury plaintiff was free from fault or negligence contributing to said alleged injury defendants has neither knowledge nor information sufficient to form a belief.

For a second and further defence herein the defendant avers that at all the times stated in said complaint and from that time hitherto the following statutory provision was and still is in force in
12 the State of Iowa, to wit:

Sec. 2525, Code of 1873: "All causes of actions shall survive and may be brought, notwithstanding the death of the person entitled or liable to the same;" that thereby and by the decissions of the courts of said State of Iowa causes of action for personal torts are assignable.

That at and before the commencement of this action the plaintiff, as the defendant is informed and so believes, had assigned a one-half interest in the claim now sued for herein to John A. Lovely and D. F. Morgan, doing business as lawyers under the firm name and style of Lovely and Morgan at Albert Lea, Minnesota; that said assignment still exists in full force and virtue, but whether it is in writing or verbal defendant has not sufficient knowledge nor information to enable it to form a belief; that said Lovely & Morgan and John A. Lovely and D. F. Morgan are necessary parties plaintiff and should be joined with the plaintiff as such herein.

Wherefore the defendants prays that this action may be abated, and for judgment against the plaintiff for costs.

J. D. SPRINGER,
With whom is JOHN WHYTOCK,
Attorneys for Defendant, Minneapolis, Minn.

13 STATE OF MINNESOTA, *Hennepin County:*

C. H. Hudson, being first duly sworn, says he is general manager of the within-named defendants; has heared the foregoing answer read, and the same is true to his knowledge, except as to those matters stated upon information and belief, and as to those he believes it to be true.

C. H. HUDSON.

Subscribed and sworn to before me by the — C. H. Hudson this 16th day of March, A. D. 1882.

[NOTARY SEAL.] WILLIAM D. HALE,
Notary Public, Minnesota.

Endorsed: Filed Jan'y 11th, 1883. Geo. T. Gardner, clerk of the district court.

14 STATE OF MINNESOTA, *County of Freeborn:*

District Court, 10th Judicial District.

FRED. G. HERRICK, Plaintiff,

vs.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Defendant.

The defendant, by consent, amends its answer herein by striking out the 15th and 16th lines on the first page and inserting in lieu thereof the following: The defendant admits the enactment of the

statute therein refer-ed —, but avers that the same has been, since the passage thereof, abrogated by the Constitution of the United States, and especially the 14th amendment thereof.

J. D. SPRINGER,
Att'y for Def't, Minneapolis, Minn.

Endorsed: Filed Jan. 9th, 1884. Geo. T. Gardner, clerk of the district court.

15 STATE OF MINNESOTA, *County of Freeborn:*

In District Court.

FRED. G. HERRICK, Plaintiff,
vs.
THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Defendant.

To Messrs. Lovely & Morgan, attorneys of plaintiff above named:

You will please take notice that the defendant will move said court, on the 16th day of May, 1882, at the general term thereof then to be holden, at the court-house in the city of Albert Lea, in said county, at the opening of said court, or as soon thereafter as counsel can be heard, for leave to serve and file the annexed proposed amendment to its answer in the above-entitled cause.

Dated May 11, 1882.

J. D. SPRINGER &
JOHN WHYTOCK,
Attorneys for Def't.

16 STATE OF MINNESOTA, *County of Freeborn:*

District Court, 10th Judicial District.

FRED. G. HERRICK, Plaintiff,
vs.
THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Defendant.

For an amendment to its answer herein the defendant shows unto the court as a second defense that, by the published rules of this company in force at the time of the injury in question and of which the defendant was fully cognizant and by which *he* agreed to be bound at and before the time of the accident in question, it became and was the duty of the plaintiff and of all other brakemen in the employ of the defendant to see and know that all cars required to be coupled were furnished with a suitable link and pin with which to make such coupling, and in making couplings not to go
17 between the cars to be coupled when the same were coupled together, but to adjust the coupling apparatus prior to making the coupling and to stand outside the track and to guide the link into the coupler with a stick. Wherefore the defendant submits to the court that the plaintiff is not entitled to recovery on account of the alleged insufficiency of the link and pin described in the complaint herein.

J. D. SPRINGER &
J. WHYTOCK,
Attorneys for Defendant.

STATE OF MINNESOTA, *County of Hennepin,* } ss:

John Whytock, being duly sworn, says he is one of the attorneys of the within-named defendants; has heard the following answer read, and the same is true to his knowledge and belief.

——— ———.

Subscribed and sworn to before me this 11 day of May, A. D. 1882.

——— ———.

18 STATE OF MINNESOTA, *County of Freeborn:*

In District Court.

FRED. G. HERRICK, Plaintiff,

vs.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Defendant.

Now comes the above-named plaintiff, and, replying to the answer of the defendant in the above-entitled cause and to the new matter therein contained—

Denies that at or before the time of the commencement of this action or at any time plaintiff assigned a one-half interest or any interest in the cause of action set forth in the complaint to John A. Lovely & D. F. Morgan, either as alleged in said answer or at all, and denies that said John A. Lovely or D. F. Morgan, or Lovely & Morgan, or either of them are necessary or proper parties to
19 this action or have any interest therein, either as alleged in said answer or at all.

And, further replying, said plaintiff denies that at the time of making and verifying said answer or at any time the said defendant or its attorney or general manager or other officer had any knowledge or information that at or before the time of the commencement of this action or at any time the plaintiff assigned a one-half interest or any interest in the claim or cause of action set forth in the complaint herein to John A. Lovely or D. F. Morgan or either of them or to any one else, as alleged in the pretended plea in abatement contained in said answer, or at all, and alleges that the said plea in abatement aforesaid is wholly false, sham, and frivolous. Plaintiff denies each and every allegation of new matter set forth in said answer not herein before specifically denied, and demands judgment as prayed in the complaint herein.

20 Dated Mar. 20, 1882.

LOVELY & MORGAN,
Plaintiff's Att'ys.

STATE OF MINNESOTA, *County of Freeborn,* } ss:

D. F. Morgan came before me and, being duly sworn, on his oath says he is one of the attorneys for the plaintiff in the above-entitled cause; that the foregoing reply therein is true of his own knowledge, except as to the matters herein stated on his information and

belief, and as to those matters he believes it to be true, and that the reason why this affidavit is not made by plaintiff is that he is absent from Freeborn county, Minnesota, where his attorneys reside.

D. F. MORGAN.

Subscribed and sworn to before me this 20th day of March, A. D. 1882.

[NOTARY SEAL.] JOHN A. LOVELY,
Notary Public, Minn.

21 STATE OF MINNESOTA, *County of Freeborn:*

District Court, Tenth Judicial District.

FRED. G. HERRICK, Plaintiff,
vs.
THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Defendant.

This cause came on to be tried at the regular January term of this court, commencing on the 8th day of January, A. D. 1884, at the court-house in the city of Albert Lea, in the aforesaid county and State, Messrs. Lovely and Morgan appearing as counsel for the plaintiff and J. D. Springer, Esq., and Messrs. Whytock & Todd for the defendant.

And, upon being reached in its regular order upon the calendar, was taken up and tried by a jury duly empanelled and sworn. Said jury, after hearing all the evidence adduced upon the trial, the arguments of counsel, and the charge of the court, retired,
22 and brought in a verdict, in which they find for the plaintiff and assess his damages in the sum of two thousand dollars, $2,000.00.

Now, upon motion of Messrs. Lovely & Morgan, attorneys for plaintiff, it is hereby ordered and adjudged that the plaintiff, Fred. G. Herrick, have and recover of the defendant, The Minneapolis and St. Louis Railway Company, the sum of two thousand and forty-seven and $\frac{28}{100}$ dollars as damages and interest to date, and the further sum of thirty-eight and $\frac{3}{100}$ dollars as costs and disbursements, as taxed and allowed by me this day, amounting in all to the sum of two thousand and eighty-five & $\frac{31}{100}$ dollars, $2,085.31.

Dated Albert Lea, this 12th day of May, A. D. 1884.

GEO. T. GARDNER,
Clerk of said Court.

23 STATE OF MINNESOTA, *Freeborn County:*

In District Court.

FRED. G. HERRICK, Plaintiff,
vs.
THE MINNEAPOLIS AND ST. LOUIS RAILWAY CO., Defendant.

We, the jury in the above-entitled cause, find for the plaintiff and assess his damages at 2,000 dollars.

THOMAS PURCELL, *Foreman.*

Endorsed: Filed Jan'y 10, 1884. Geo. T. Gardner, clerk of the district court.

24 STATE OF MINNESOTA, *County of Freeborn:*

District Court, 10th Judicial District.

FREDERICK G. HERRICK, Plaintiff,

vs.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Defendant.

The above-entitled cause came on for hearing before the court and jury at the regular term of said court, on the 8th day of January, A. D. 1884.

By consent of the plaintiff the defendant had leave to amend and did amend its answer setting forth that the statute of Iowa set out in the plaintiff's complaint was abrogated by the 14th amendment to the Federal Constitution.

Thereupon the plaintiff gave evidence tending to prove the allegations of his complaint that he sustained the injuries set forth in his complaint in consequence of the negligence of the engineer of defendant, as set forth in said complaint, and at the time of such injury he was serving the defendant as brakeman on the train on which said engineer was serving defendant as engineer.

The allegations set forth in said complaint respecting defects in the link and pin were abandoned and no evidence given tend-
25 ing to support the same. Thereupon the defendant, in support of his plea in abatement for the non-rejoinder of Lovely & Morgan—John A. Lovely & D. F. Morgan—as parties plaintiff herein, offered evidence tending to prove that, by the laws of Iowa in force at the time of the trial herein and for more than five years continuously prior thereto, claims for personal injuries of all kinds were transferable, in whole or in part, so as to give the assignee a right of action therefor in his own name when assigned as a whole and when assigned in part a right of action jointly with the owner of the remainder. The defendant then offered in evidence a certain contract made and executed at Albert Lea, Minnesota, where plaintiff's attorneys reside, and produced by plaintiff in open court on notice from defendant; which contract is in the words and figures following, to wit:

Memorandum of agreement between Fred. G. Herrick and Lovely & Morgan, witnesseth: Whereas the said Herrick has a just cause of action against The Minneapolis and St. Louis R'y Co. for a personal injury sustained by the negligence of one of its employees, and has no money wherewith to prosecute the said claim: Now, therefore, in consideration thereof and of the agreement herein contained, it is agreed between said parties as follows: The said Lovely & Mor-
gan are hereby employed and retained by said Herrick as
26 his attorney- to collect said claim and to do all things requisite and necessary or convenient to accomplish that end, particularly including the commencement of any suit or suits necessary or

proper therefor. It is further agreed that the said Lovely & Morgan are to have and do have full and absolute control over any suit commenced against said company, and the same is not to be settled except by and through them. The said Herrick particularly agrees not to settle said case except upon the consent and advice of his said attorneys; and it is further agreed that as compensation for their services and expenses in said cause the said Lovely and Morgan are to receive a sum equal to fifty per cent. or ½ of the entire sum collected from said company, the said Lovely & Morgan hereby agreeing that in the event of their failure to collect anything from said company they will make no charge against said Herrick for their said services.

Dated March 2nd, 1882.

LOVELY & MORGAN,
Att'ys, Albert Lea, Minn.
FRED. G. HERRICK,

27 The due execution and delivery of said contract before the commencement of this action was admitted by said plaintiff. To the introduction of said contract the plaintiff objected on the sole ground that the same did not give the persons therein named, John A. Lovely & D. F. Morgan, nor the firm of Lovely & Morgan such an interest in the cause of action declared on as required them or either of them to be joined with the plaintiff in this cause as parties plaintiff, and on the ground that such contract was immaterial, which objections were sustained by the court and said contract excluded; to which rulings the defendant at the time duly excepted. Thereupon the court submitted the cause to the jury, who returned a verdict for the plaintiff, assessing his damages at $2,000.00.

It was also proved on the trial of said action that the plaintiff was at all times up to the month of September, 1882, a resident of the State of Iowa, and that at the time of the injuries complained of he was employed by defendant to work for it wholely in the State of Iowa.

The above and foregoing is all the evidence offered or received on the trial of the above-entitled cause upon those issues.

28 The foregoing, having been examined and found conformable to the truth, is hereby allowed and signed as the settled case and as containing all the evidence offered or received on the trial of the within-entitled cause, with the exceptions to the exclusion of the contract in writing therein refer-ed to.

Signed this 28th day of February, 1884.

JOHN G. FARMER,
Judge of said Court.

29 STATE OF MINNESOTA, *County of Freeborn:*

District Court, 10th Judicial District.

FRED. G. HERRICK, Plaintiff,

against

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Defendant.

The defendant in the cause above entitled moves the court to set aside the general verdict herein and for a new trial for the following reasons:

First. Because said verdict is contrary to law.

Second. The negligence complained of was that of a fellow-servant.

Third. An action on the Iowa statute set up in plaintiff's complaint is not maintainable in this State.

Fourth. Said Iowa statute is abrogated by the Federal statutes and Constitution, and particularly the 14th amendment to the Federal Constitution.

Fifth. The court erred in sustaining plaintiff's objections to and excluding the contract between plaintiff and Lovely & Morgan offered in evidence by the defendant.

J. D. SPRINGER,
Att'y for Defendant, Minneapolis, Minn.

30 STATE OF MINNESOTA, *County of Freeborn:*

District Court, 10th Judicial District.

FREDERICK G. HERRICK, Plaintiff,

vs.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Defendant.

It is hereby stipulated and agreed by and between the parties hereto that the proposed case attached hereto may be presented to and settled and signed by the judge of the court above named at any time before the third day of March, 1884.

Also that the motion for new trial hereto attached may be presented and submitted at the same time; the stay heretofore entered herein may be extended until ten days after notice of the decision of said motion.

LOVELY & MORGAN,
Pl'ff's Att'ys.
J. D. SPRINGER,
Def't's Att'y.

Endorsed: Filed June 30, 1884. Geo. T. Gardner, clerk of the district court.

31 STATE OF MINNESOTA, *County of Freeborn:*

District Court, 10th Judicial District.

FRED. G. HERRICK, Plaintiff,
against
THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Defendant.

You will please take notice that the defendant, The Minneapolis & St. Louis Railway Company, appeals to the supreme court of the State of Minnesota from the judgment and each and every part thereof of this court in this action entered on the 12th day of May, 1884.

Dated May 16th, 1884.

J. D. SPRINGER &
WHYTOCK & TODD,
Attorneys for Defendant.

To Lovely & Morgan, att'ys for plaintiff, and Geo. T. Gardner, clerk of the district court.

Endorsed: Filed May 16, 1884. Geo. T. Gardner, clerk of the district court.

32 STATE OF MINNESOTA, } ss:
County of Freeborn, }

I, Geo. T. Gardner, clerk of the district court in and for the county of Freeborn, in the State of Minnesota, do hereby certify that I have compared the foregoing with the original judgment roll, together with the bill of exceptions & notice of appeal to the supreme court, remaining on file in my office, and that the same is a true and perfect transcript of said original.

In testimony whereof witness my hand and seal of said court, at Albert Lea, in said county, this 26th day of July, A. D. 1884.

[SEAL.] GEO. T. GARDNER, *Clerk.*

33 Endorsed: 3927. State of Minnesota supreme court. Fred. G. Herrick, resp't, *vs.* The Minneapolis and St. Louis R'y Co., app't. Return on appeal. Filed Sept. 24, 1884. Sam. H. Nichols, clerk.

34 State of Minnesota Supreme Court. General October Term, A. D. 1884.

THURSDAY MORNING, *October 9th, A. D.* 1884—9.30 o'clock.

Court convened pursuant to adjournment, all the justices being present.

FRED. G. HERRICK, Respondent,
vs.
THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Appellant. } No. 121. 3927.

This cause came on to be heard this day upon the motion of counsel for the respondent to affirm the judgment of the court below.

Thereupon the same was argued by counsel for the respective parties, submitted to the court for decision, and taken under advisement.

Now, after duly considering the same, it is ordered that the motion to affirm the judgment of the court below be, and the same hereby is, in all things denied.

The cause then came on to be heard upon the return to the appeal herein.

35 Thereupon the same was argued by counsel for the respective parties, submitted to the court for decision, and taken under advisement by the court.

A true record.

Attest: SAM. H. NICHOLS, *Clerk.*

The foregoing is a full and true copy of the minutes of argument and order in the above-entitled cause.

Attest: [SEAL.] SAM. H. NICHOLS, *Clerk.*

Endorsed: ——.

36 State of Minnesota Supreme Court. General October Term, A. D. 1884.

MONDAY MORNING, *October 13th, A. D.* 1884—9.30 o'clock.

Court convened pursuant to adjournment, all the justices being present except Hon. William Mitchell, associate justice.

FRED. G. HERRICK, Respondent,
vs.
THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Appellant. } No. 121. 3927.

This cause having been heard at a former day of this term upon the return to the appeal herein—

Now, after duly considering the same, it is ordered that the judgment of the court below herein appealed from be, and the same hereby is, in all things affirmed, and that the respondent have judgment accordingly.

A true record.

Attest: SAM. H. NICHOLS, *Clerk.*

The foregoing is a full and true copy of the minutes of
37 argument and order in the above-entitled cause.

Attest: [SEAL.] SAM. H. NICHOLS, *Clerk.*

Endorsed: Copy of minutes and order filed.

38 Supreme Court of Minnesota.

FRED. G. HERRICK, Respondent,
against
THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Appellant.

Now, on this 22d day of October, A. D. 1884, came the above-named parties, by their respective counsel, & suggest dim*m*inution

of the record in the omission of the judgment appealed from. Thereupon, at the request of both parties, the clerk of the court below is ordered to certify to this court forthwith a duly authenticated copy of the judgment appealed from.

October 22d, 1884.

JAMES GILFILLAN,
Chief Justice Sup. Court.

39 Endorsed: 3927. State of Minnesota supreme court. Fred. G. Herrick, resp't, *vs.* The M. & St. Louis R'y Co., app't. Order of court. Filed Oct. 22d, 1884. Sam. H. Nichols, clerk, by W. A. Nichols, d'p'ty.

40 STATE OF MINNESOTA, *County of Freeborn:*

District Court, Tenth Judicial District.

FRED. G. HERRICK, Plaintiff,
vs.
THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Defendant.

This cause came on to be tried at the regular January term of this court, commencing on the 8th day of January, A. D. 1884, at the court-house in the city of Albert Lea, in the aforesaid county and State, Messrs. Lovely & Morgan appearing as counsel for the plaintiff and J. D. Springer, Esq., and Messrs. Whytock & Todd for the def'd't; and, upon being reached in its regular order upon the calendar, was taken up and tried by a jury duly empanneled and sworn. Said jury, after hearing all the evidence adduced upon the trial, the arguments of counsel, and the charge of the court, retired and brought in a verdict, in which they find for the plaintiff and assess his damages in the sum of two thousand dollars, $2,000.00:

Now, upon motion of Messrs. Lovely & Morgan, attorneys for plaintiff, it is hereby ordered and adjudged that the plaintiff, Fred. G. Herrick, have and recover of the defendant, The Minneapolis & St. Louis Railway Company, the sum of two thousand and
41 forty-seven & $\frac{28}{100}$ dollars as damages and interest to date, and the further sum of thirty-eight & $\frac{3}{100}$ dollars as costs and disbursements, as taxed and allowed by me this day, amounting in all to the sum of two thousand and eighty-five & $\frac{31}{100}$ dollars, $2,085.31.

Dated Albert Lea, this 12th day of May, A. D. 1884.

GEO. T. GARDNER,
Clerk of said Court.

42 STATE OF MINNESOTA, }
County of Freeborn, } *ss:*

I, Geo. T. Gardner, clerk of the district court in and for the county of Freeborn, in the State of Minnesota, do hereby certify that I have compared the foregoing with the original judgment remaining on file in my office, and that the same is a true and perfect transcript of said original.

In testimony whereof witness my hand and seal of said court, at Albert Lea, in said county, this 23rd day of October, A. D. 1884.

GEO. T. GARDNER, *Clerk.*

43 Endorsed: State of Minnesota, county of Freeborn. 3927. Fred. G. Herrick *vs.* The Minneapolis & St. Louis R'y Co. Certified copy of judgment. Filed Oct. 25, 1884. Sam. H. Nichols, clerk, by W. A. Nichols, dep.

44 In Supreme Court, State of Minnesota.

FRED. G. HERRICK, Respondent,

vs.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Appellant.

To J. D. Springer, Esq., attorney for the above-named appellant, and to said appellant.

GENTLEMEN: You will please take notice that the costs and disbursements of the respondent in the above-entitled cause, of which a sworn statement is hereto attached, will be taxed by and before Samuel H. Nichols, clerk of said court, at his office, in the city of St. Paul, in the county of Ramsey and State aforesaid, on the 25th day of October, A. D. 1884, at ten o'clock in the forenoon, and that the amount allowed by said clerk on such taxation will be inserted and included in the judgment then and there to be entered in said action in favor of said respondent and against said appellant.

Dated October 15th, A. D. 1884.

LOVELY & MORGAN,
Respondent's Attorneys, Albert Lea, Minn.

45 *Costs and Disbursements of Respondent.*

In Supreme Court, State of Minnesota.

FRED. G. HERRICK, Respondent,

vs.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Appellant.

Statute costs	$25 00
Clerk's fees in supreme court	9 50
Affidavits	1 00
Mandate and transcript	1 00
Printer's fees, printing respondent's brief	10 00
Total amount of costs	$46 50

I hereby allow and tax the within costs and disbursements, in favor of respondent, at $46.50, this 25th day of October, 1884.

SAM. H. NICHOLS, *Clerk,*
By W. A. NICHOLS, *Dep.*

46 STATE OF MINNESOTA, } ss:
County of Freeborn, }

D. F. Morgan came before me and, being by me first duly sworn, on his oath deposes and says that he is one of the attorneys for the respondent in the above-entitled cause; that the above and foregoing bill and items of costs and disbursements therein are just and correct, and have been actually and necessarily incurred therein.

D. F. MORGAN.

Subscribed and sworn before me this 15th day of October, A. D. 1884.

[SEAL.] JOHN A. LOVELY,
Notary Public, Freeborn County, Minnesota.

47 STATE OF MINNESOTA, } ss:
County of Freeborn, }

Henry Morgan came before me and, being by me duly sworn, on his oath deposes and says that he is clerk in the law office of Messrs. Lovely & Morgan, attorneys for the respondent in the above-entitled action; that he did, on the 16th day of October, A. D. 1884, at the city of Albert Lea, in the county of Freeborn and State aforesaid, and the place of residence of said attorneys, deposit in the post office, in said city, a true and correct copy of the annexed notice of taxation of costs and affidavit of costs and disbursements, enclosed in an envelope directed to J. D. Springer, attorney for the above-named appellant, The Minneapolis & St. Louis Railway Company, at Minneapolis, Minnesota, the place of residence of said attorney, and prepaid the postage thereon, there being daily communications between said points by mail.

HENRY MORGAN.

Subscribed and sworn to before me this 16th day of October, A. D. 1884.

[SEAL.] D. F. MORGAN,
Notary Public, Freeborn Co., Minn.

48 Endorsed: 3927. In supreme court, State of Minnesota. Fred. G. Herrick, respondent, *v.* The M. & St. L. R'y Co., appellant. Notice of taxation of costs and affidavit of costs & disbursements. Original. Filed Oct. 22d, 1884. Sam. H. Nichols, clerk, by W. A. Nichols, deputy. Lovely & Morgan, att'ys for respondent, Albert Lea, Minn.

49 STATE OF MINNESOTA:

Supreme Court. October Term, A. D. 1884.

FRED. G. HERRICK, Respondent,
vs.
THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Appellant. } No. 121.

Pursuant to an order of court, duly made and entered in

this cause on the thirteenth day of October, A. D. 1884, it is here and hereby determined and adjudged that the judgment of the court below, herein appealed from, to wit, of the district court of the tenth judicial district, sitting within and for the county of Freeborn, be, and the same hereby is, in all things affirmed.

And it is further determined and adjudged that the respondent above named do have and recover of said The Minneapolis and St. Louis Railway Company, appellant herein, the sum and amount of forty-six dollars and fifty cents ($46.50), costs and
50 disbursements in this cause in this court, and that said respondent have execution for the enforcement hereof.

Dated and signed this twenty-fifth day of October, 1884.

By the court:

Attest:

SAM. H. NICHOLS, *Clerk*,
By W. A. NICHOLS, *Dep'ty*.

Statement for Judgment.

Costs allowed by statutes	$25 00
Printer's fees for printing briefs	10 00
Clerk's fees, supreme court	9 50
Filing mandate and docketing transcript	1 00
Four affidavits	1 00
	$46 50

STATE OF MINNESOTA, *ss:*

Supreme Court.

I, Sam. H. Nichols, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original
51 remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this 25th day of October, A. D. 1884.

[SEAL.] SAM. H. NICHOLS, *Clerk*,
By W. A. NICHOLS, *Dep'ty*.

Endorsed: Transcript of judgment. Filed October 25th, A. D. 1884. Sam. H. Nichols, clerk, by W. A. Nichols, dep'ty. Lovely & Morgan, att'ys for respondent.

52 [Endorsed:] No. 3927. State of Minnesota, supreme court. Fred. G. Herrick, respondent, *vs.* The Minneapolis and St. Louis Railway Company, appellant. Judgment roll. Filed October 25th, 1884. Sam. H. Nichols, clerk, by W. A. Nichols, dep'ty. Lovely & Morgan, att'ys for respondent.

53 *Opinion.*

Supreme Court. October Term, 1884.

FRED. G. HERRICK, Respondent,

vs.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Appellant.

By the Court:

There is nothing in the point that the cause of action was in part assigned to Lovely & Morgan. The other points raised are identical with those decided by this court on the former appeal. See 31 Minn., p. 11, and we adhere to that decision.

Judgment affirmed.

(Indorsed:) Opinion. Filed Nov. 27th, 1884. Sam. H. Nichols, clerk.

54 STATE OF MINNESOTA, *ss:*

Supreme Court.

I, Sam. H. Nichols, clerk of said supreme court, do hereby certify that the foregoing is a full, true, and correct copy of the opinion in the cause therein entitled, as appears from the original remaining of file in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this 29th day of December, A. D. 1884.

[Seal of the Supreme Court, State of Minnesota.]

SAM. H NICHOLS,
Clerk of Supreme Court of Minnesota.

55 *Syllabus.*

Supreme Court. April Term, 1883.

FRED. G. HERRICK, Appellant,

vs.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Respondent.

A cause of action which accrued in the State of Iowa under a statute of that State which makes every corporation operating a railroad in that State liable for all damages sustained by its employees in consequence of the negligence of other employees of such corporation, when such wrongs are in any manner connected with the use or operation of any railway on or about which they shall be employed, may be maintained and enforced in this State.

It is not necessary that the law of the State where the right of action accrued and the law of the forum where it is sought to be enforced should concur in holding that the act done gave a right of action.

The statute referred to is not against the public policy of
56 the laws of this State, although differing from the common-law rule, which we retain. Neither does the fact that this statute only applies to corporations operating railroads under it in conflict with the provision of the 14th amendment to the Federal Constitution, that "no State shall deny to any person within its jurisdiction the equal protection of the laws."

Order reversed.

57 *Opinion.*

Supreme Court. April Term, 1883.

FRED. G. HERRICK, Appellant,

vs.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, Respondent.

The defendant owned and operated a line of railroad from Albert Lea, in this State, to Fort Dodge, in the State of Iowa.

The plaintiff entered the service of defendant in Iowa as brakesman on one of its trains to be operated wholly in that State. While coupling cars on his train, in the discharge of his duty, in that State, plaintiff was injured through the negligence of the engineer in charge of the train under such circumstances as to give him a right of action under a statute of Iowa which makes every corporation operating a railway in that State liable for all damages sustained by any person, including employees of such corporation, in consequence
58 of the neglect of agents or by mismanagement of the engineers or other employees of such corporation when such wrongs are in any manner connected with the use or operation of any railway on or about which they shall be employed. See 1307, title 10, ch. 5, Code of Iowa, 1873.

This action was brought to recover damages for the personal injury thus sustained in that State.

The court below dismissed the action on the ground that the right of action thus accruing under the statute of Iowa could only be enforced in that State.

The correctness of this ruling is the only question involved in this appeal.

The general rule is that actions for personal torts are transitory in their nature and may be brought wherever the wrong-does may be found and jurisdiction of his person can be obtained. As to torts which give a right of action at common law this rule has never been questioned, and we do not see why the transitory
59 character of the action or the jurisdiction of the courts of another State to entertain it can in any manner be affected by the question whether the right of action is statutory or common law.

In actions *ex contractu* there is no such distinction, and there is no good reason why any different rule should be applied in actions *ex delicto*. Whenever by either common law or statute a right of action has become fixed and a legal liability incurred, that liability, if the

action be transatory, may be enforced and the right of action pursued in the courts of any State which can obtain jurisdiction of the defendant, provided it is not against the public policy of the laws of the State where it is sought to be enforced. Of course, statutes that are criminal or penal in their nature will only be enforced in the State which enacted them; but the statute under which this action is brought is neither, being purely one for the reparation of a
60 civil injury. The statute of another State has, of course, no extra territorial force, but rights acquired under it will always in comity be enforced if not against the public policy of the laws of the forum. In such cases the law of the place where the right was acquired or the liability was incurred will govern as to the right of action, while all that pertains merely to the remedy will be controlled by the law of the State where the action is brought, and we think the principle is the same, whether the right of action shall be *ex contractu* or *ex delicto*.

The defendant admits the general rule to be as thus stated, but contends that as to statutory actions like the present it is subject to the qualification that to sustain the action the law of the forum and the law of the place where the right of action accrued must concur in holding that the act done gives a right of action. We admit that some text-writers—notably Rover—on interstate law seem to
61 lay down this rule, but the authorities cited generally fail to sustain it.

We have examined all of the numerous cases cited on this point by defendant, and we find only one which, in our opinion, sustains him, while several are really against him.

Most of the cases thus cited belong to one or the other of the two following classes:

First. Cases which hold that statutes giving a right of action for injuries causing the death of another, having no extra territorial operation, only apply to injuries inflicted in the State which enacted the statute and not to injuries or acts done in another State.

Such is the case of Whitford *v.* R. R. Co., 23 N. Y., 465. This undoubtedly — the settled law, but it does not touch the present case.

The second class consists of cases which hold that where the statute gives such a right of action to the personal representative of
62 the deceased it can only be maintained by an administrator or executor appointed and acting under the laws of the State which enacted the statute, taking the ground that this right of action is not a right of property which passes to the estate, but is for the benefit of the family or next of kin of the deceased, and therefore the statute contemplates the exercise of the power and the execution of the trust only by a personal representative appointed under domestic laws. To this class belong the cases of Richardson *v.* R. R. Co., 98 Mass., 85, and Woodward *v.* R. R. Co., 10 Ohio St., 121. Some courts refuse to adopt this rule; but this question is not involved in the present case.

A few cases appear to lay some stress upon the fact that the statutes of both States were similar, but rather as evidence of the fact that the statute of the State giving the right of action is not con-

63 trary to the policy of the laws of the State where the action was brought. Such is the the case of Chi. & St. L. & N. O. *vs.* Doyle (Sup. Ct. Miss.), 8 Eng., and Am. R'way cases, 171, in which, after saying that the action may be asserted because of the coincidence of the statutes of the two States, the court add, "And independently of this because a right of action created by the statute of another State of a transitory nature may be enforced here when it does not conflict with the public policy of this State to permit its enforcement, and our statute is evidence that the public policy of this State is favorable to such rights instead of being inimical to them."

But it by no means follows that because the statute of one State differs from the law of another State that therefore it may be held contrary to the policy of the laws of the latter State. Every day our courts are enforcing rights under foreign contracts where the *lex loci contractus* and the *lex fori* are altogether different, and

64 construe these contracts and enforce rights under them according to their force and effect under the laws of the State where made. To justify a court in refusing to enforce a right of action which accrued under the laws of another State because against the policy of our laws it must appear that it is against good morals or natural justice, or that, for some other such reason, the enforcement of it would be prejudicial to the general interests of our own citizens. If the State of Iowa sees fit to impose this liability upon those operating railroads within her bounds, and to make it a condition of the employment of those who enter their service, we see nothing in such a law repugnant either to good morals or natural justice or prejudicial to the interests of our own citizens.

The only case which goes to the length of holding that the

65 action cannot be maintained is that of Anderson *vs.* Chicago, Mil. & St. Paul R. R. Co., 37 Wis., 321, which on the facts is on all fours with the present case and in which the court holds that such an action will only lie in the State of Iowa, which enacted the statute; but with due deference to that court, and especially to the eminent jurist who delivered the opinion in that case, we think they entirely failed to distinguish between the right of action which was created by the statute of Iowa and must be governed by it and the form of the remedy which is always governed by the law of the forum, whether the action lie *ex contractu* or *ex delicto*. It is elementary that the remedy is governed by the law of the forum, and this is all that is held by any case cited by the court in support of their opinion.

The case of Bettys *vs.* Mil. &. St. Paul R. R. Co., 37 Wis., 323, was

66 an action brought under an Iowa statute to recover double damages for cattle killed in Iowa.

This case was probably correctly decided upon the second ground stated in the opinion, viz., that the statute was penal, and therefore could only be enforced in the State which enacted it.

The following cases, we think, support our conclusions that this action may be maintained, although we have no such statute in this State: Dennick *vs.* R. R. Co., 103 U. S., 11; Seward *vs.* Steamship Co., 84 N. Y., 48; Chi., St. L. & N. O. R. R. Co., *supra;* N. & C. R.

R. Co. *vs.* Sprayberg, 8 Baxter (Tenn.), 341; see also Selma, Rome & Dalton R. R. Co. *vs.* Lacy, 43 Geo., 461, and same case, 49 Geo., 106.

II. The defendant further contends that the statute of Iowa is in violation of the fourteenth amendment to the Constitution of the United States, which declares: "No State shall deny to any person within its jurisdiction the equal protection of the law."

The ground for this contention consists in the fact that the
67 law does not apply to all persons, but only to railroad companies, thus imposing on them a liability not imposed on others.

There is great danger that some of the provisions of this fourteenth amendment will be attempted to be applied to cases for which it was never designed. In view of the history surrounding its adoption we doubt whether it was ever intended to apply to cases like the present; but, even if it was, we find nothing in this statute repugnant to its provisions. The provision of the constitutional amendment referred to does not surround the citizen with any protection additional to those before given under the constitutions of the States. It was not in the power of the States before the adoption of this amendment to deprive citizens of the United States of the equal protection of the laws. The only change produced by making this constitutional principle a part of the Federal Constitu-
68 tion is to make the Supreme Court of the United States the final arbiter of — case in which a violation of this principle by State law is complained of. If a State, in view of the peculiar nature of service upon railroads and the dangers incident to it, shall, as a matter of State policy, require these corporations, which are the creatures of its statutes, to assume the risk of injuries to their servants resulting from the negligence of fellow-servants also in their employ, we think they have a right to do so. Statutes imposing special duties and liabilities upon railroad companies are to be found on the statute books of almost every State, and, if general in their application to all such corporations, they are valid. McAllwick *v.* R'y Co., 20 Iowa, 338; Johnson *v.* Ch., Mil. & St. P. R. R. Co., 13 N. W. Rep., 673.

Order reversed.

MITCHELL, *J.*

Endorsed: Opinion & syllabus. Filed July 11, 1883. Sam. H. Nichols, clerk.

69 STATE OF MINNESOTA, *ss:*

Supreme Court.

I, Sam. H. Nichols, clerk of said supreme court, do hereby certify that the foregoing is a full, true, and — copy of the opinion and syllabus in the cause therein entitled as appears from the original remaining of record in my office; that I have carefully compared the copy with said original, and that the same is a correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of said supreme court, at the capitol, in the city of Saint Paul, this 29th day of December, A. D. 1884.

[Seal of the Supreme Court, State of Minnesota.]

SAM. H. NICHOLS,
Clerk of the Supreme Court of the State of Minnesota.

70 To the Honorable James Gilfillian, chief justice of the supreme court of the State of Minnesota:

And now comes your petitioner, The Minneapolis and St. Louis Railway Company, by J. D. Springer, its attorney, and alleges—

That in the year 1882 Fred. G. Herrick commenced an action at law against your petitioner in the district court of the State of Minnesota in and for the county of Freeborn, in which the sole relief sought — of a money judgment for personal injuries received by him in the State of Iowa during the month of December, 1881, while there and then serving your petitioner as a brakeman on a freight train, and which injuries were caused solely by the negligence of the locomotive engineer of the train, who was then also a servant of your petitioner and a fellow-servant of the said Fred. G. Herrick.

That said action came on for trial at the January, 1884, term of said court and resulted in a verdict in favor of said Herrick and against your petitioner for the sum of two thousand dollars, upon which judgment was rendered on the 12th day of May, 1884, in favor of said Herrick and against your petitioner for $2,047.28 *dollars* damages and 38.03 dollars costs.

That the said Fred. G. Herrick, as the sole ground upon which your petitioner was responsible for the negligence of said locomotive engineer, set up and alleged in his complaint in said action that the following statute was in full force in the State of Iowa at the time the said Herrick received the injuries complained of, to wit:

"SEC. 1307. Every corporation operating a railway shall be liable for all damages sustained by any person, including employés
71 of such corporation, in consequence of the neglect of agents, or by any mismanagement of the engineers or other employés of the corporation, and in consequence of the wilful wrongs, whether of commission or omission of such agents, engineers, or other employés, when such wrongs are in any manner connected with the use and operation of any railway on or about which they shall be employed, and no contract which restricts such liability shall be legal or binding."

That in its answer to said complaint your petitioner alleged and set up that said statute was abrogated by and repugnant to that provision of the Constitution of the United States which declares that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," nor shall any "State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," being section one of article fourteen of the Constitution of the United States.

That on the said trial said cause was adjudged against your petitioner, and said statute of Iowa held by said court to be in full force and effect, and that by the force and effect thereof your petitioner was responsible to the said Herrick for the negligence of the said engineer.

That afterwards and on the 25th day of October, 1884, your petitioner perfected an appeal from said judgment to the supreme court of Minnesota, the same being the highest court in said State in which a decision could be had in said action.

That on the 30th day of October, A. D. 1884, final judgment was rendered in said action by said supreme court of Minnesota affirming the said judgment appealed from and holding and adjuding that

72 the said statute of Iowa was not abrogated by nor repugnant to the said provisions of the Constitution of the United States, but was in full force and effect, and that by the force and effect thereof your petitioner was responsible to the said Herrick for the negligence of the said locomotive engineer.

That all the foregoing facts appear in the records and proceedings in said action; in consequence whereof manifest error has resulted, to the great damage of your petitioner.

Wherefore your petitioner prays for the allowance of a writ of error and such other process as may be necessary to secure the correction of the errors aforesaid in the Supreme Court of the United States.

JAS. D. SPRINGER,
Attorney for Petitioner, Minneapolis, Minnesota.

Allowed:

JAMES GILFILLAN,
Chief Justice Supreme Court of Minnesota.

73 STATE OF MINNESOTA:

Supreme Court.

I, Samuel H. Nichols, clerk of the supreme court of the State of Minnesota, do hereby certify that the foregoing is a full, true, and correct copy of a petition filed in my office on the 30th day of October, A. D. 1884, as full, true, and complete as the same now remains on file and of record in my office.

Witness my hand and official seal this tenth day of November, A. D. 1884.

[Seal of the Supreme Court, State of Minnesota.]

SAM. H. NICHOLS,
Clerk Supreme Court of Minnesota.

74 [Endorsed:] 3927. State of Minnesota supreme court. Fred. G. Herrick, respondent, *vs.* The Minneapolis and St. Louis Railway Company, appellant. Copy petition.

75 Supreme Court of the United States.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, Plaintiff in Error.
against
FRED. C. HERRICK, Defendant in Error.

Know all men by these presents that we, The Minneapolis & St. Louis Railway Company, as principal, and Wm. H. Truesdale and Chas. F. Hatch, of the city of Minneapolis and State of Minnesota, as sureties, are held and firmly bound unto Fred. G. Herrick, his executors or administrators, in the sum of five thousand dollars, to be paid to the said Fred. G. Herrick, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, or administrators, firmly by these presents.

Sealed with our seals. Dated this 20th day of October, 1884.

Whereas the above-named Minneapolis and St. Louis Railway Company hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled cause by the supreme court of the State of Minnesota:

Now, therefore, the condition of this obligation is such that if the above-named Minneapolis and St. Louis Railway Company will prosecute its writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

THE MINNEAPOLIS & ST. LOUIS R'Y CO.,
By WM. H. TRUESDALE, *Vice-President.*
WM. H. TRUESDALE.
CHAS. F. HATCH.

Sealed and delivered in presence of—
J. D. SPRINGER.
A. M. ALLEN.

76 STATE OF MINNESOTA, } ss:
County of Hennepin, }

Wm. H. Truesdale and Chas. F. Hatch, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five thousand dollars over and above all his just debts and liabilities.

WM. H. TRUESDALE.
CHAS. F. HATCH.

Sworn to before me this 30th day of October, A. D. 1884.
[SEAL.]
A. M. ALLEN,
Notary Public, Hennepin County, Minn.

I hereby approve the within bond and sureties.
Dated Oct. 30th, 1884.

JAMES GILFILLAN,
Chief Justice Supreme Court of Minnesota.

77 STATE OF MINNESOTA :

Supreme Court.

I, Samuel H. Nichols, clerk of the supreme court of the State of Minnesota, do hereby certify that the foregoing is a full, true, and correct copy of a bond filed in my office on the 30th day of October, A. D. 1884, as full, true, and complete as the same now remains on file and of record in my office.

Witness my hand and official seal this tenth day of November, A. D. 1884.

[Seal of the Supreme Court, State of Minnesota.]

SAM. H. NICHOLS,
Clerk Supreme Court of Minnesota.

78 UNITED STATES OF AMERICA, *ss:*

To Fred. G. Herrick, defendant in error, and to Messrs. Lovely & Morgan, his attorneys, Greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the 2nd Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, wherein the Minneapolis and St. Louis Railway Company is plaintiff in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable James Gilfillan, chief justice of the supreme court of the State of Minnesota, this 30th day of October, in the year of our Lord one thousand eight hundred and eighty-four.

JAMES GILFILLAN,
Chief Justice of the Supreme Court of the State of Minnesota.

STATE OF MINNESOTA, }
County of Freeborn, } *ss:*

W. E. Todd, being duly sworn, on his oath deposes and says that he served the foregoing citation and writ of error on Messrs. Lovely & Morgan by delivering to John A. Lovely, a member of said firm of Lovely & Morgan, true copies of said citation and writ of error at the city of Albert Lea, in the county and State aforesaid, on the (7th) seventh day of November, A. D. 1884.

W. E. TODD.

Subscribed in my presence and sworn to before — by the said W. E. Todd this seventh day of November, A. D. 1884.

[Seal District Court, Freeborn County, Min.]

GEO. T. GARDNER,
Clerk of Dist. Court.

79 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

Because that in the records and process and also in the rendition of judgment of a plea which is in the said court of Minnesota before you or some of you, being the highest court of the said State in which a decision could be had in the said cause between Fred. G. Herrick, as plaintiff, and The Minneapolis and St. Louis Railway Company, as defendant, wherein was drawn in question the validity of the statute of the State of Iowa, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of its validity, a manifest error hath happened, to the great damage of the said Minneapolis and St. Louis Railway Company, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the 2nd Monday of October next, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, this 30th day of October, in the year of our Lord one thousand eight hundred and eighty-four.

OSCAR B. HILLIS,
Clerk of the U. S. Circuit Court for the District of Minn.

STATE OF MINNESOTA, *ss:*

Supreme Court.

80 I, Samuel H. Nichols, clerk of the supreme court of the State of Minnesota, do hereby certify that the foregoing is a full, true, and correct copy of the writ of error filed in my office on the 30th day of October, A. D. 1884, as full, true, and complete as the same now remains on file and of record in my office.

Witness my hand and official seal this 5th day of November, A. D. 1884.

[Seal of the Supreme Court, State of Minnesota.]

SAM. H. NICHOLS,
Clerk Supreme Court of Minnesota,
By W. A. NICHOLS, *Dep.*

81 STATE OF MINNESOTA :

Supreme Court.

I, Samuel H. Nichols, clerk of the supreme court of the State of Minnesota, do hereby certify that the foregoing is a full, true, and correct copy of a citation and return thereon filed in my office on the 10th day of November, A. D. 1884, as full, true, and complete as the same now remains on file and of record in my office.

Witness my hand and official seal this tenth day of November, A. D. 1884.

[Seal of the Supreme Court, State of Minnesota.]

SAM. H. NICHOLS,
Clerk of Supreme Court, Minnesota.

82 UNITED STATES OF AMERICA, *ss* :

The President of the United States to the honorable the judges of the supreme court of the State of Minnesota, Greeting :

Because that in the records and process and also in the rendition of judgment of a plea which is in the said court of Minnesota before you or some of you, being the highest court of the said State in which a decision could be had in the said cause between Fred. G. Herrick, as plaintiff, and The Minneapolis and St. Louis Railway Company, as defendant, wherein was drawn in question the validity of the statute of the State of Iowa, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of its validity, a manifest error hath happened, to the great damage of the said Minneapolis and St. Louis Railway Company, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the 2nd Monday of October next, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, this 30th day of October, in the year of our Lord one thousand eight hundred and eighty-four.

[Seal U. S. Circuit Court, Dist. of Minnesota.]

OSCAR B. HILLIS,
Clerk of the U. S. Circuit Court for the District of Minnesota.

83 STATE OF MINNESOTA, *ss:*

Supreme Court.

The answer of the judges of the supreme court of the State of Minnesota in the within writ of error mentioned.

The record and proceedings whereof mention is within made, all things concerning the same, are hereby respectfully certified to the justices of the Supreme Court of the United States of America within mentioned in a certain schedule to this writ annexed, as within it is commanded.

In testimony whereof Sam. H. Nichols, the clerk of said court, has hereunto subscribed his name officially and has caused the seal of the supreme court of Minnesota to be hereunto affixed this twenty-ninth day of December, A. D. 1884.

[Seal of the Supreme Court, State of Minnesota.]

SAM. H. NICHOLS,
Clerk of Supreme Court, Minnesota.

Endorsed on cover: Minnesota supreme court. No. 202. The Minneapolis & St. Louis Railway Company, plaintiff in error, *vs.* Fred. G. Herrick. Filed January 16, 1885.

Office Supreme Court U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 202.

THE MINNEAPOLIS AND ST. LOUIS RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

FRED G. HERRICK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR PLAINTIFF IN ERROR.

C. K. DAVIS, Counsel for Plaintiff in Error.

SUPREME COURT 1

OF THE

UNITED STATES.

OCTOBER TERM, 1887.

NO. 202.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, 2
Plaintiff in Error,

vs.

FRED G. HERRICK, *Defendant in Error.*

ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

STATEMENT.

The defendant in error sued the plaintiff in error 3
in the district court of the state of Minnesota in and for the county of Freeborn, to recover for personal injuries. The complaint sets out that the railway company was incorporated under a statute approved March 3, 1853; that it owns and operates a railroad extending from Minneapolis, Minnesota, to Fort Dodge, in Iowa; that section 1307 of title 10 of chapter 5 of the code

of Iowa, provides as follows, viz.: "Every corporation operating a railway shall be liable for all damages sustained by any person, including employes of such corporation, in consequence of the neglect of agents, or by any mismanagement of the engineers or other employes of the corporation, and in consequence of the willful wrongs, whether of commission or omission, of such agents, engineers or other employes, when such wrongs are in any manner connected with the use and operation of any railway on or about which they shall be employed, and no contract which restricts such liability shall be legal or binding."

It is averred that, while this statute was in force, the defendant in error was employed by the plaintiff in error at the county of Webster in the state of Iowa, to serve it as a brakeman, and that thereafter, on or about the sixth day of December, 1881, while in such employ at said county, it became his duty to make a coupling of an engine and freight car on one of the tracks of the plaintiff in error, which engine was then in charge of one of the servants—an engineer; that the plaintiff in error, its agents and servants neglected to furnish the car with a proper link or coupling pin; that the link and pin which were attached to the car were wholly unsuitable, defective and out of repair, but were not known to the defendant in error to be so,—whereby the defendant in error was exposed to great, unusual and unexpected risk in making the coupling. (The allegation as to the link or coupling pin was withdrawn at this trial.

Record, p. 9; *folio* 24.)

That he proceeded to make this coupling and while doing so received severe and permanent injury, which

was occasioned *solely* by reason of and on account of 8
the culpable negligence and mismanagement of the engineer, who, it is alleged, carelessly and recklessly drove the engine against the car in violation of order and signals then given.

(*Record, pp.* 2-3; *folios* 3-10.)

The answer admitting the Iowa statute set out in the complaint, and denying specifically the rest of the com- 9
plaint, alleges that the statute of Iowa "has been, since the passage, abrogated by the constitution of the United States, and especially by the fourteenth amendment thereof."

(*Record, pp.* 4-5; *folios* 10-15, *and p.* 9; *folio* 24.)

The case was tried by a jury Jan, 8, 1884, who found a verdict in favor of the defendant in error in 10
the sum of two thousand ($2,000) dollars, and on May 12, 1884, judgment was entered thereon in his favor for $2,047.28, damages and interest, and $38.03 costs, in all for $2,085.31.

(*Record, p.* 8; *Folios* 21-23.)

Upon this trial "the plaintiff gave evidence tending "to prove the allegation of his complaint that he sus- 11
"tained the injuries set forth in his complaint in conse-"quence of the negligence of the engineer of defend-"ant, as set forth in said complaint, and at the time of "such injury he was serving the defendant as brake-"man on the train on which said engineer was serving "defendant as engineer.

"The allegations set forth in said complaint re-

12 "specting defects in the link and pin were abandoned "and no evidence given to support the same."

(*Record*, *p.* 9; *folio* 24.)

The plaintiff in error moved for a new trial on several grounds, one of which was that "said Iowa statute "is abrogated by the federal statutes and constitution, "and particularly the fourteenth amendment to the 13 "federal constitution."

(*Record*, *p.* 11; *Folio* 29.)

Judgment on this verdict having been rendered, as hereinbefore stated, the plaintiff in error appealed to the supreme court of Minnesota, May 16, 1884.

(*Record*, *p.* 12; *folio* 31.)

That court on the twenty-fifth day of October, 1884, 14 affirmed the judgment of the district court.

(*Record*, *pp.* 16-17; *folios* 49-50.)

In doing this it necessarily, and also in terms, decided against the defense that the statute of the state of Iowa set out in the complaint, as a basis for the right to recover, is in contravention to the fourteenth amendment to the constitution of the United States, saying, in the head note prepared by the 15 court: "Neither does the fact that this statute "only applies to corporations operating railroads under "it conflict with the provision of the fourteenth amend- "ment to the federal constitution, 'that no state shall "deny to any person within its jurisdiction the equal "protection of the laws.'"

(*Record*, *p.* 19; *folio* 56.)

In its opinion the supreme court of Minnesota holds 16
as follows:

"II. The defendant further contends that the statute
"of Iowa is in violation of the fourteenth amendment
"to the constitution of the United States, which de-
"clares: 'No state shall deny to any person within
"its jurisdiction the equal protection of the laws.'

"The ground for this contention consists in the fact
"that the law does not apply to all persons, but only to
"railroad companies, thus imposing on them a liability 17
"not imposed on others.

"There is great danger that some of the provisions of
"this fourteenth amendment will be attempted to be
"applied to cases for which it was never designed. In
"view of the history surrounding its adoption we doubt
"whether it was ever intended to apply to cases like
"the present; but, even if it was, we find nothing in
"this statute repugnant to its provisions. The provis- 18
"ion of the constitutional amendment referred to does
"not surround the citizen with any protection additional
"to those before given under the constitutions of the
"States. It was not in the power of the States before
"the adoption of this amendment to deprive citizens
"of the United States of the equal protection of the
"laws. The only change produced by making this
"constitutional principle a part of the federal consti- 19
"tution is to make the supreme court of the United
"States the final arbiter of—case in which a violation
"of this principle by state law is complained of. If a
"state, in view of the peculiar nature of service upon
"railroads and the dangers incident to it, shall, as a
"matter of state policy, require these corporations,
"which are the creatures of its statutes, to assume the

20 "risk of injuries to their servants resulting from the "negligence of fellow servants also in their employ, we "think they have a right to do so. Statutes imposing "special duties and liabilities upon railroad companies "are to be found on the statute books of almost every "state, and, if general in their application to all such cor- "porations, they are valid."

McAlwick vs. R'y Co., 20 Iowa, 338.

21 *Johnson vs. Ch., Mil. & St. P. R. R. Co.*, 13 *N. W. Rep.* 673.

(*Record, p.* 21; *folios* 66-68.)

Whereupon a writ of error was duly allowed to this court upon the following petition:

To the Honorable James Gilfillan, Chief Justice of the Supreme Court of the State of Minnesota:

And now comes your petitioner, the Minneapolis &
22 St. Louis Railway Company, by J. D. Springer, its attorney, and alleges—

That in the year 1882 Fred G. Herrick commenced an action at law against your petitioner in the district court of the state of Minnesota in and for the county of Freeborn, in which the sole relief sought—of a money judgment for personal injuries received by him in the state of Iowa during the month of December, 1881, while there and then serving your petitioner as a
23 brakeman on a freight train, and which injuries were caused solely by the negligence of the locomotive engineer of the train, who was then also a servant of your petitioner and a fellow servant of the said Fred G. Herrick.

That said action came on for trial at the January, 1884, term of said court and resulted in a verdict in

favor of said Herrick and against your petitioner for 24
the sum of two thousand dollars, upon which judgment was rendered on the twelfth day of May, 1884, in favor of said Herrick and against your petitioner for 2,047.28 dollars damages, and 38.03 dollars costs.

That the said Fred G. Herrick, as the sole ground upon which your petitioner was responsible for the negligence of said locomotive engineer, set up and alleged in his complaint in said action that the follow- 25
ing statute was in full force in the state of Iowa at the time the said Herrick received the injuries complained of, to-wit:

"SEC. 1307. Every corporation operating a railway shall be liable for all damages sustained by any person, including employes of such corporation, in consequence of the neglect of agents, or by any mismanagement of the engineers or other employes of the 26
corporation, and in consequence of the willful wrongs, whether of commission or omission, of such agents, engineers, or other employes, when such wrongs are in any manner connected with the use and operation of any railway on or about which they shall be employed, and no contract which restricts such liability shall be legal or binding."

That in its answer to said complaint your petitioner alleged and set up that such statute was abrogated by 27
and repugnant to that provision of the constitution of the United States which declares that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," nor shall any "state deprive any person of life, liberty, or property without due process of law, nor deny to

28 any person within its jurisdiction the equal protection of the laws," being section 1 of article 14 of the constitution of the United States.

That on the said trial said cause was adjudged against your petitioner, and said statute of Iowa held by said court to be in full force and effect, and that by the force and effect thereof your petitioner was responsible to the said Herrick for the negligence of the said
29 engineer.

That afterwards and on the twenty-fifth day of October, 1884, your petitioner perfected an appeal from said judgment to the supreme court of Minnesota, the same being the highest court in said State in which a decision could be had in said action.

That on the thirtieth day of October, A. D. 1884, final judgment was rendered in said action by said
30 supreme court of Minnesota affirming the said judgment appealed from and holding and adjudging that the said statute of Iowa was not abrogated by nor repugnant to the said provisions of the constitution of the United States, but was in full force and effect, and that by the force and effect thereof your petitioner was responsible to the said Herrick for the negligence of the said locomotive engineer

31 That all the foregoing facts appear in the records and proceedings in said action, in consequence whereof manifest error has resulted, to the great damage of your petitioner.

Wherefore your petitioner prays for the allowance of a writ of error and such other process as may be

necessary to secure the correction of the errors afore- 32
said in the supreme court of the United States.

JAS. D. SPRINGER,
Attorney for Petitioner, Minneapolis, Minnesota.

Allowed:

JAMES GILFILLAN,
Chief Justice Supreme Court of Minnesota.

(*Record, pp.* 23-24; *folios* 70-72.) 33

(*Folios* 70-72.)

Citation was duly made and the cause removed into this court by writ of error.

(*Folios* 78-83.)

ASSIGNMENT OF ERRORS. 34

In this suit there was drawn in question the validity of a statute of the state of Iowa, on the ground of its being repugnant to the constitution of the United States, and the decision of the supreme court of the state of Minnesota was in favor of the validity of the 35
said statute. A right, privilege and immunity, and the equal protection of the laws were claimed under the constitution of the United States by the plaintiff in error, and the decision of the supreme court of the state of Minnesota was against the right, privilege, immunity and protection specially set up and claimed by

said plaintiff in error under the constitution of the United States, to wit: in deciding that the said statute of Iowa was not in contravention of the fourteenth admendment to the constitution of the United States. In so deciding the supreme court of Minnesota erred.

POINTS AND AUTHORITIES.

"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Const. 14*th amendment.*

"Every corporation operating a railway shall be liable for all damages sustained by any person, including employes of such corporation, in consequence of the neglect of agents, or by any mismanagement of the engineers or other employes of the corporation, and in consequence of the willful wrongs, whether of commission or omission, of such agents, engineers, or other employes, when such wrongs are in any manner connected with the use and operation of any railway on or

about which they shall be employed, and no contract 40
which restricts such liability shall be legal or binding."

McLain's Annotated Statutes (Iowa), vol. 1, p. 357, sec 1307.

The statute of Iowa is void as in conflict with the 41
fourteenth amendment to the constitution of the United States.

Ex parte Virginia, 100 U. S. 339.

Tiernan vs. Rinker, 102 Id. 123.

Weil vs. Calhoun, 25 Fed. Rep. 865.

The Stockton Laundry Case, 26 Fed. Rep. 611.

Virginia vs. Rives, 100 U. S. 313.

County of Santa Clara vs. S. P. R. R. Co., 18 Fed. 42
Rep. 385.

Yick Ho vs. Hopkins, 118 U. S. 356.

Pearson vs. Portland, 69 Me. 278.

The County of San Mateo vs. R. R. Co., 8 Am. & Eng. R. R. Cases 1.

N. P. R. R. Co. vs. Carland, 3 Pac. Rep. 134.

Santa Clara Co v S.P. R.R. Co 118 U.S. 394.

When the natural and reasonable effect of a state statute is to violate the federal constitution, it will be held void, in whatever language it may be framed to 43
bring it within the legislative power of the state.

Henderson vs. The Mayor, 92 U. S. 259.

Chy Lung vs. Freeman, Ind. 275.

Neal vs. Delaware, 103 U. S. 370.

Soon Hing vs. Crowley, 113 U. S. 703.

Cooley Const. Lim. (4th ed.) 719 (marg. p. 577) *et seq.*

44 *Bank Tax Cases*, 2 Wall. 200.

A corporation is a "person" and as such entitled to "the equal protection of the laws."

U. S. Bank vs. Devaux, 5 Cranch, 61, 87.

Society, etc. vs. Town of New Haven, 8 Wheat, 464.

45 Before the adoption of this statute the common law rule was of general application in Iowa that the principal is not liable for damage sustained by an employe by the negligence of a co-employe in the same general service.

Sullivan vs. M. & M. R. R. Co., 11 Iowa, 421; decided in 1861.

46 This common law rule is still in force in Iowa except as provided by the statute in question.

Peterson vs. Whitebreast Mining Co., 50 Iowa, 673.

This case was decided in 1879. It was to recover damages sustained by the plaintiff through the negligence of a co-employe in the working of a coal mine which was operated by the defendant employer.

47 The court adheres to the rule laid down in 11 Iowa, saying: "Nearly twenty years ago it was held in *Sullivan vs. M. & M. R. R. Co.*, 11 Iowa, 421, that the principal was not liable for damages sustained by the employe from the negligence of a co-employe in the same general service. This rule as to railroad corporations has been changed by statute."

The court then proceeds to exonerate the defendant upon the common law principle above stated.

So that the law of that state may be expressed as 48
follows: "No employer, excepting a corporation operating a railway, shall be liable for damage sustained by an employe by the negligence of a co-employe in the same general service. Every corporation operating a railway shall be liable for damage sustained by an employe by the negligence of a co-employe in the same general service."

It will doubtless be urged that this statute is sustain- 49
able under the police power, as a measure tending to the public safety.

To this it is answered that the "equal protection of the laws" can no more be denied by an invalid exercise of the police power, than it can by an invalid exercise of the power to tax, or to prescribe tolls, and charges to railroads, or by any other invalid exercise of state authority.

The constitution can not thus be violated by pretext. 50
Under the disguise of the police power one person, or one class of persons, can not be burdened, while all other persons, or classes of persons, are at liberty to pursue the vocation thus invidiously prohibited.

Thus, if in the Slaughter House cases, all corporations engaged in butchering had been required to have their slaughtering done at the slaughter house 51
of the Crescent City Company, while all other persons were allowed to butcher where they pleased, such an enactment would be a plain attack upon the corporations, intended to deny to them the equal protection of the laws, and would not be a bona fide exercise of the police powers. To extend such legislation over an entire state is merely to make a wrong universal as

52 to the proscribed interest, and thus to make the wrong more noxious.

The police power, in the usual manner of its exercise, commands something to be done, or prohibits some act, and enacts a penalty for disobedience.

As to all persons, natural or artificial, who are engaged in the operation of railroads, it may impose certain obligations such as the employment of servants
53 whose vision has been tested for color blindness or who have had a certain amount of actual training in a particular department, or may require the use of some mechanical device for the protection of employes. In such case it is probable that a statute, which as a consequence of default in obeying the law, should make every such employer liable to the employe for the negligence of co-employes would be valid. But the statute of Iowa presents no word or phrase bringing it within any such
54 principle. It does not require any person to do or to abstain from doing any act. It simply provides that a certain class of persons — railroad corporations — shall be liable absolutely to its servants, and leaves all other persons who are or may be engaged in operating railways entitled to that "protection of the laws" which is denied to the railroad corporations.

If this can be done as to all railroad corporations it
55 can be done as to any one, or to all corporations operating railroads in any particular county, leaving all others to the enjoyment of "the equal protection of the laws."

Again, the right of one person to hire employes upon the same terms as other persons and to occupy the same relations to them ought to be within "the equal protection of the laws." This right is taken

away by this statute from railroad corporations. Taken 56
away not only by inference but by express provision making void any contract which restricts the liability imposed by section 1307.

The statute does not relate to liability for the use of dangerous machinery. The corporation is made liable to its employes for any injury arising from the negligence of co-employes in the operation of the railroad.

It affects only railroad corporations. All corporations or persons engaged in dangerous operations, 57
where machinery is required, are exempt from the liability imposed by this statute.

Suppose this statute read: "Every corporation using machinery operated by steam shall be liable, etc.," would it not be plain that the object of such a statute was not to exercise the police power, but to make the corporation liable, not because it uses steam machinery but because it is a corporation. 58

As to all persons who may operate railways the statute affects only one class, the corporation. The natural person who may be engaged in operating a railway has the common law defense which this statute takes away from the corporation. Some railroads are operated by natural persons. All railroads can be so operated.

It is no answer to this to say that nearly every railroad is operated by a corporation, for such an answer 59
by its terms admits that some railroads are not so operated, and the application of this statute to corporations alone makes the law read, that every person operating a railway (except a corporation) shall not be liable for certain acts, and that for the same acts the corporation shall be liable.

60 If every railroad in the state of Iowa were operated by a corporation the statute would be void. It is enough that there may exist such conditions as will make the statute a denial "of the equal protection of the laws." If the natural result, or the avowed object, of this statute is unconstitutional, it matters not that the conditions for its unequal protection may arise after its passage.

61 If void it is void in itself. It does not become unconstitutional by condition subsequent. If it could thus become invalid it might be constitutional for a series of years and then void for another era, and become valid again for another period by the passing away of the situation which for a time had rendered it invalid.

62 There is nothing in the fact that a railroad is operated by a corporation which warrants classifying such corporations as the only persons who shall be subject to the liability prescribed by this statute, and be deprived of the defense which it takes away from them. The amendment was intended to prevent the classification of generic business interests, and to deny the right to enact different and conflicting rules of obligation or exemption, varying in stringency from total exemption up to total liability.

63 But, as we have remarked, the classification attempted by this statute is in the body of one interest, viz.: that interest which operates railroads by corporations. The corporation is made liable when the natural person remains exempt. The statute is distinctly personal, and is against the corporation because it is a corporation. It is against it, not for anything it may

do or fail to do in the operation of a railroad, but 64
because it is a corporation operating a railroad.

The question may be considered from another point of view. The statute denies to that large class of 65
laborers who are not employed by corporations operating railroads a protection of law which laborers have who are employed by such corporations. The arguments adduced as to the effect of this statute upon the corporation apply with equal force here, and they need not be restated.

But the assertion that this statute is an exercise of 66
the police power is a specious pretext. It was intended, and such intention is plain from its terms, to discriminate against corporations operating railroads, simply because they are such corporations.

It is merely an invidious change of the law of master and servant, by which one class of masters is 67
denied an "equal protection of the laws" which all other masters continue to enjoy.

In *Yick Ho vs. Hopkins*, 118 U. S., 356 ordinances of the city of San Francisco were declared void, which by their terms prohibited "any person" from carrying on the laundry business in the city and county

68 of San Francisco without first having obtained the consent of the board of supervisors. These ordinances were so administered by the board that no Chinese could obtain such consent, while it was granted to every Caucasian. The ordinances, though by their terms applicable to "any person," thus became applicable only to some persons. The design of their enactment became apparent from the method of their execution. Their natural and reasonable effect was to
69 violate the constitution, so that the case presented was as if these ordinances had read "any Chinese" instead of "any person." The statute of Iowa presents no such general expression as "any person." It is expressly limited in its application to "every corporation operating a railway." The supreme court of that State applies to the employer intended by this statute the rule of law prescribed therein, while it applies to
70 all other employers a different and more favorable rule. It gives to the latter a defense which this statute expressly takes away from the former.

The supreme court in the 118 U. S. distinguishes the case there considered from the case of *Barbier vs. Connelly*, 113 U. S. 27, and *Soon Hing vs. Crowley*, 113 U. S. 703, in which it was held that the ordinance then in question was purely police regulation, necessary as a matter of precaution in a city composed
71 largely of wooden buildings. That ordinance was simply a prohibition to carry on the washing and ironing of clothes in public laundries and wash houses within certain prescribed limits in the city and county of San Francisco from 10 o'clock at night until 6 o'clock in the morning of the following day. The ordinance was adjudged not to be within the prohibition of

the fourteenth amendment to the constitution. The court 72
in 118 U. S., reiterates that the fourteenth amendment was "undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness, and acquire and enjoy property; that they should have like access to the courts of the country for 73
the protection of their persons and property, the prevention and redress of wrongs and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone, except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and conditions. * * * Class legislation, discriminating against some and favoring others, is prohibited; but legislation which, in carrying out a public purpose, is limited in its application, if, within the sphere of its operation, it affects alike all persons similarly situated, is not within the amendment." 74

The supreme court has recently decided that a legislative act which removes the bar which the statute of limitations enables the debtor to interpose to prevent recovery for a debt, is valid. 75

Campbell vs. Holb, 115 U. S. 620.

If any act should, by express terms, remove this bar against "every corporation operating a railway," and leave all other debtors protected by the bar, there can be no doubt but it would be void upon the principles expressed in the above quotation. Had the statute

76 which was sustained in *Munn vs. Illinois* (94 U. S. 113) prescribed only the maximum of charges for the storage of "grain by corporations operating warehouses and elevators," we submit, it could not have been upheld.

The court declares in 118 U. S. that "the fourteenth amendment to the constitution is not confined to the protection of citizens. It says, 'nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its
77 jurisdiction the equal protection of the laws.' These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of men, of color or of nationality, and the equal protection of the laws is a pledge of the protection of equal laws."

The judgment of the supreme court of Minnesota should be reversed.

C. K. Davis,
Council for Plaintiff in Error.

3-210

SUPREME COURT U.S.
FILED
DEC 29 1887
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States,

NO. 202.

OCTOBER TERM, 1887.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY,
Plaintiff in Error,
vs.
FRED G. HERRICK,
Defendant in Error.

In Error to the Supreme Court of the State of Minnesota.

Brief for Defendant in Error.

EDWARD J. HILL,
For Defendant in Error.

ST. PAUL:
J. W. CUNNINGHAM & CO.
1887.

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OCTOBER TERM, 1887.

THE MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY,

Plaintiff in Error,

against

FRED G. HERRICK,

Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

In 1862, the legislature of the State of Iowa enacted that "every railroad company shall be liable for all damages sustained by any person, including employes of the company, in consequence of any neglect of the agents, or by any mismanagement of the engineers or other employes, of the corporation, to any person sustaining such damage."

Plaintiff in error contends that this statute violates the Fourteenth Amendment to the Constitution of the United States, in that its provisions do not apply to all persons, but only to rail-

way companies, thus imposing on them a liability not imposed on others; and the Supreme Court of Minnesota having declared the statute valid (*Herrick* v. *Ry. Co.*, 31 Minn. 16), that question is the only one before the court on this writ of error.

First. The provisions of the Fourteenth Amendment were not intended to apply to cases like the one at bar.

Slaughter House Cases, 16 Wall. 36.

"'The manifest purpose of the statute was to give its benefits to employes engaged in the hazardous business of operating railroads" (*Cole J*, in *Deppe* v. *Chicago, etc. Ry. Co.*, 36 Ia. 52-55); and the power to enact it belonged to the State unaffected by the Constitution of the United States or any of the articles of amendment.

United States v. *Dewitt*, 9 Wall. 41, and cases cited.

In the latter case an act of Congress which undertook, as a part of the internal revenue laws, to make it a misdemeanor to mix for sale naptha and illuminating oils, or to sell oil of petroleum inflammable at less than a prescribed temperature, was held to be void within State limits, because as a police regulation the power to make such a law belonged to the States, and did not belong to Congress.

In *New York* v. *Miln*, 11 Peters, 102, the validity of a statute of New York which required of every master of a vessel arriving at New York City from a foreign port to report the names, ages, occupation, etc., of his passengers, was assailed as being an invasion of the exclusive right of Congress to regulate commerce. But notwithstanding this, it was held to be an exercise of the police power of the State.

The court say (page 138): "It is not only the right, but the bounden and solemn duty of a State, to advance the safety, happiness and prosperity of its people, and to provide for its gen-

eral welfare by any and every act of legislation which it may deem conducive to these ends; where the power over the particular subjects, or the manner of its exercise is not surrendered or restrained in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that, consequently, in relation to these, the authority of a State is complete, unqualified and exclusive." See also

License Tax Cases, 5 Wall. 471, and case cited.

Authorities might be multiplied illustrating the principle so fully settled, that the general police powers of the States remain unaffected by the amendment in question.

"It was not within the power of the States before the adoption of the Fourteenth Amendment to deprive citizens of the equal protection of the laws."

Cooley's Const. Lim. (4th Ed.) 498.

This right of equality is a principle of republicanism, and the duty of enforcing it was originally assumed by the States; and it still remains there.

United States v. *Cruikshank*, 92 U. S. 542-555.

Second. But assuming that the provisions of the Fourteenth Amendment are applicable to cases like the present, even then there is nothing in this statute repugnant to such amendment.

The statute is general in its application; it applies alike to all railway corporations in that State, and the rights and duties arising under it have been constantly and frequently enforced therein by the state and federal courts for a quarter of a century.

McAunich v. *M. & M. Ry. Co.*, 20 Iowa, 338.
Deppe v. *Chicago etc. Ry. Co.*, supra.
Schroeder v. *Chicago, etc. Ry. Co.*, 41 Iowa, 344.
Potter v. *Chicago, etc., Ry. Co.*, 46 Iowa, 399.

It will hardly be denied that it was within the power of the State of Iowa to "prescribe peculiar rules for the several occupations, and to establish distinctions in the rights, obligations, duties and capacities of its citizens."

"If the laws be otherwise unobjectionable, all that can be required in these cases is, that they be general in their application to the class or locality to which they apply; and they are then public in character, and of their propriety and policy the legislature must judge."

Cooley's Const. Lim. (4th Ed.) 489.

Under this power "persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health and prosperity of the State; of the perfect right in the legislature to do which, no question ever was, or upon acknowledged general principles ever can be made."

Redfield, C. J., in Thorpe v. *Ry. Co.*, 27 Vt. 149.

The recent application of this doctrine in the Kansas prohibition cases renders it too plain for discussion that, to use the language of the Supreme Court of Minnesota in the present case, "If a State, in view of the peculiar nature of the service upon railroads, and the danger incident to it, shall, as a matter of State policy, require these corporations, which are the creatures of its statutes, to assume the risk of injuries to their servants resulting from the negligence of fellow-servants also in their employ, it has a right to do so."

In 1875 the legislature of Wisconsin enacted a statute like the one in question, but much more general and comprehensive in its terms (Chapter 173, Laws Wisconsin, 1875), and its validity was affirmed by the Supreme Court of that State in the case of

Ditberner v. *C., M. & St. P. Ry. Co.*, 47 Wis. 138.

The statutes of Minnesota (Chapter 13, Laws Minnesota, 1887) impose a similar liability on railroad companies.

In Georgia it is provided (Code of Ga. 1873, Sec. 2083): "Railroad companies are common carriers and liable as such. As such companies necessarily have many employes who cannot possibly control those who should exercise care and diligence in the running of trains, such companies shall be liable to such employes as to passengers, for injuries arising from the want of such care and diligence."

This statute has been applied in many cases in that State. See

Georgia, etc., R. Co. v. *Goldwire*, 56 Ga. 196.
Marsh v. *South Carolina R. Co.*, Id. 274.
Georgia R. Co. v. *Rhodes*, Id. 645.

To the same effect was the Revised Statutes, Missouri, 1855, page 647, enforced by the Supreme Court of that State in

Schultz v. *Pacific R. Co.*, 36 Mo. 13.

The doctrine of "common employment," which, before the statute, exempted the master from liability in such cases was placed upon grounds of public policy, but the fact that the courts of Iowa recognized that policy and applied it, will hardly be considered as binding on the legislature. The whole doctrine of exemption is an exception to the ancient general rule or maxim of the common law, *Respondeat superior.*

Chicago, etc., R. Co. v. *Moranda*, 93 Ill. 302.

And the extreme hardship and injuctice of the rule as applied to railway service, with its powerful and dangerous instrumentalities, its numerous departments and different grades of employment, is the reason, as we have seen, which led the State of Iowa to change the rule.

In this connection the existence of the Miners Act of Illinois, passed in 1872, entitled "An act to provide for the health and safety of persons employed in coal mines," and statutes of similar import in many other States, exemplify the more mod-

ern and humane policy of protecting workmen engaged in dangerous occupations. This policy is also shown by the English Factory Acts, and the English Coal Mines Regulation Act, 1872, cited in

2 *Thompson on Negligence*, 1007.

"Statutes imposing special duties and liabilities on railroad companies and other corporations are to be found on the statute books of almost every State, and if general in their application to all such corporations they are valid." (Mitchell, J., in *Herrick* v. *Ry. Co., supra.*) They do not deny to such companies the equal protection of the laws.

Johnson v. *Chicago, etc , R. Co.*, 29 Minn. 429.
Blake v. *R. Co.*, 19 Minn. 418; 94 U. S. 180.
Munn v. *Ill.*, 94 U. S. 113.
Chicago, etc., R Co. v. *Iowa, Id.* 155.
Peik v. *R. Co., Id.* 164.

The judgment should be affirmed.

Edward J. Hill
for Defts. in Error